

Number: **200817002**
Release Date: 4/25/2008
Index Number: 1362.01-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-106515-07
Date:
January 17, 2008

LEGEND

Company 1 =

Company 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear _____ :

This letter responds to your letter dated January 22, 2007, and subsequent communication, requesting a ruling under § 1362(g) of the Internal Revenue Code.

FACTS

Company 1 was organized in State as a limited liability company on Date 1 and elected to be treated as a partnership for federal tax purposes effective that same date. On

Date 2, Company 2 incorporated under State law. Company 2 timely filed Form 2553, Election by a Small Business Corporation, electing to be classified as a subchapter S corporation effective Date 2. On Date 3, Company 1, an ineligible shareholder, acquired the stock of Company 2. Company 2's S corporation status terminated on Date 3.

Company 1 filed Form 8832, Entity Classification Election, and Form 2553 on Date 4, electing to be classified as a subchapter S corporation effective Date 5.

Company 1 requests consent to file Form 8869, Qualified Subchapter S Subsidiary Election, on behalf of Company 2 effective Date 5. Date 5 is prior to the five-year waiting period after Company 2's S corporation status terminated on Date 3, as imposed by § 1362(g).

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the terms “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362(a), to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that, if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the

Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation will tend to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or the shareholders having a substantial interest in the corporation and was not part of a plan of the corporation or of such shareholders to terminate the election.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company 2 has met its burden under § 1.1362-5(a). We grant permission to Company 2 to elect to be a qualified subchapter S subsidiary effective Date 5 and for all subsequent years unless otherwise terminated. This consent is dependent upon Company 2 successfully electing to be treated as a qualified subchapter S subsidiary and dependent upon Company 1 successfully electing to be treated as an S corporation, both elections effective Date 5.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether Company 1 is a small business corporation under § 1361(b) and we express or imply no opinion as to whether Company 2 is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Leslie H. Finlow
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: